

General publications
**Law and the Woman
in Ontario**

**Ontario Women's Bureau
Department of Labour
1971**

**Government
Publications**

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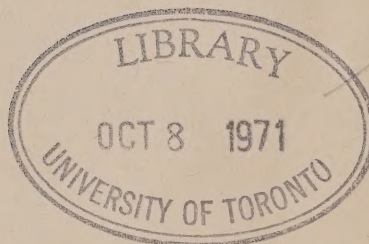
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September 1971

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This booklet is intended to give you a *general* idea of the law in Ontario as it affects women. *It is not intended to present solutions to particular problems.*

You will find here a very general treatment of your rights and duties in Ontario, with particular emphasis on women in their roles as wives and mothers. If you do run into legal difficulties it is strongly suggested that you consult a lawyer. He will be able to give you the necessary advice and assistance to ensure that your problem is settled fairly.

The law is constantly changing, so it is advisable to check whether or not the information provided in this booklet does summarize *current* legislation.

Introduction

The Law of Ontario

The law of Ontario comes from two sources — statute law and the common law.

Statutes are legislative acts of the Crown. In practice, legislation is passed by the Parliament of Canada or the Legislature of Ontario and is given the formal assent of the Governor-General or the Lieutenant-Governor.

The Dominion Government has the power to legislate in fields of national interest, such as foreign affairs, national defence, and criminal law. The authority of the provinces extends to matters of more local and regional importance, among them education, highways, and property rights. Acts of Parliament apply to everyone in Canada, and Acts of the Ontario Legislature apply only to residents of Ontario.

The major part of our law, however, is not contained in the statute books, but must be discovered from the common law. The common law is based on the recorded decisions of English and Canadian judges right back to the 11th Century. Once a particular judge has decided a particular issue between two parties, his decision remains the law on the point in issue unless it is subsequently over-ruled or modified by another court.

The Courts

There are two kinds of legal proceedings — civil and criminal. In a civil proceeding the court normally decides the rights of two private individuals, although the Crown may be party to such a proceeding. The action takes place in either a Small Claims Court, a County Court, or the Supreme Court of Ontario. The correct court depends on the type and amount of relief which the plaintiff (the person bringing suit against another person) is claiming.

Judgment will be given in favour of one party. Generally the unsuccessful party, if he wishes to try to have the original decision reversed or modified, may appeal to the Court of Appeal for Ontario, and in some circumstances to the Supreme Court of Canada.

A person commits a crime when he does anything that the law says he must not do, or fails to do anything that the law says he must do, if by reason of his act he becomes liable to punishment under the criminal law. In Canada the legislative jurisdiction over criminal law rests with the Federal Government. In Ontario, the Attorney-General is responsible for the administration and enforcement of these provisions and in this work is assisted by local law enforcement agencies.

Prosecutions for criminal offences are initiated by these law enforcement agencies as a result of their own investigations, as well as on the complaint of individuals.

Depending on the gravity of the offence and the choice of the accused, the trial may take place before a Provincial Court judge (formerly a magistrate), a County Court judge alone, or a court composed of a judge and jury. The accused is, of course, entitled to be represented by counsel of his

choosing and is further protected by the presumption that he is innocent until it is proved, beyond a reasonable doubt, that he is guilty.

Legal Aid

The Ontario Legal Aid Plan is designed to ensure that no one shall be denied the services or advice of a lawyer because of lack of money. Every resident (or in certain circumstances, a non-resident) may apply for legal assistance.

Legal assistance is not "charitable" and, in some cases, it is not free. The financial qualification for Legal Aid is based on the "need" of the applicant and not on an arbitrary "means" test. After an application has been made it will be referred to the Provincial Department of Social and Family Services, which will investigate the income, expenses and capital assets of the applicant and make a report to the area director as to whether the applicant can pay nothing, something or all of the costs of the legal aid applied for.

If you require the services of a lawyer under Legal Aid, you may apply either through a lawyer or directly to your area director. If the application is approved, you will receive a Legal Aid Certificate. You then take that certificate to a lawyer of your choice who participates in this scheme. Neither the court nor the public will know you have received legal assistance. It is a private affair between you, your lawyer and the area director.

Legal Position of Women

Historically, women have not always occupied a position of equality with men. At one time they were universally regarded as inferior beings or even as a form of property. Now women have a legal status generally the same as that of men under both civil and criminal law. The only differences that do exist are in areas where the special position and interests of women require the law's protection. Thus, the law grants certain extra consideration to women in their roles as wives and mothers.

Political Rights and Duties

Nowhere in Ontario are women disqualified from exercising their rights to vote by reason only of their sex. Any woman may vote if she is a Canadian citizen or a British subject, and has lived in Canada (or the province as the case may be) for the year prior to the election. The age qualification for voting is 21 years in Federal elections and 18 years in provincial or municipal elections.

Normally when there is an election, a voters list will be prepared by enumerators in your riding. Once your name is on this list you need only go to the appointed polling station on election day to cast your vote. If your name does not appear on this list you will have to contact the returning official in your riding to have your name added.

Almost anyone qualified to vote may run as a candidate in an election. The only persons ineligible are government employees, members of legislatures, people holding government contracts, or those guilty of corrupt practice.

Juries

The right of trial by jury carries with it the responsibility of jury duty. With a number of exceptions, women over 18 who are British subjects and who hold, or whose husbands hold, property of over the value of \$400 (\$600 in cities) are eligible for jury duty in Ontario. The main exceptions are public officials, lawyers, doctors and nurses. A woman is exempted if either she herself, or her husband, falls within one of these or other listed categories. Individuals over the age of 70 are also exempted from jury duty.

Any woman who desires may, on application, be granted one year's exemption from jury duty. At the end of the year on further application this exemption may be extended.



Marriage

While marriage is of primary concern to the two people involved, the state, in order to protect society generally, also has an interest in regulating it. A woman who is contemplating marriage should be aware of the laws regarding marriage.

Providing no lawful cause exists to hinder the marriage, anyone who is at least 18 years of age may be married under the authority of a provincial marriage licence, public banns, or a Special Permit from the Provincial Secretary. The couple may marry three days after the issue of a licence, five days from the date the final banns are posted, or the time specified by the Special Permit. Each of these forms of authorization expires after three months.

Licences are issued by the clerk or deputy clerk of any city, town or village, and by magistrates in territories without municipal organization. A properly appointed member of an Indian tribe or band may issue the licence. The \$10 licence fee is waived in the case of Reserve or Crown Land Indians. Normally both parties to the marriage must be present when applying for a marriage licence; however, if this is not possible the party attending must bring along the birth certificate of the other. At least one of the two persons applying for the marriage licence must live in Ontario.

Instead of obtaining a marriage licence, the couple may have marriage banns announced according to the custom of the church or churches to which they belong. This alternative is not available to those who have had a previous marriage dissolved by divorce or annulment. A form giving proof of publication is provided by the clergyman and must be filled out before a marriage may be solemnized.

Marriage may be solemnized in either a religious or civil ceremony. In addition to places of worship, religious ceremonies may take place in any location satisfactory to the clergyman, for example in a garden. Civil marriages may be performed either by a judge in his chambers or by a magistrate in his office, and must take place between 9 a.m. and 5 p.m.

Marriage is unlawful between persons who are closely related by blood or marriage. For example, a woman may not marry her uncle, stepfather, nephew, brother, son, husband's father or niece's husband.

Marriage is, of course, unlawful if either of the intended partners is already married. A woman who is married commits bigamy by marrying another person, or if she is single, by marrying a person whom she knows is already married. The maximum punishment for bigamy is five years' imprisonment.

Marriage of Minors

No one under 18 years of age may be married unless consent in writing is obtained from the father, or from the mother or appointed guardian in cases where the father is dead or not contributing to the support of the young person. However, consent is not necessary if both parents are dead and no guardian has been appointed, or if the person whose consent is required is mentally ill or does not live in Ontario, or cannot

be found. A judge may remove the requirement of parental consent when the person whose consent is needed arbitrarily or unreasonably withholds it, or demonstrates by his actions that he is not interested in the maintenance or well-being of the person for whose marriage his consent is required, or where it is unclear who the competent person to give consent is.

Persons under 14 years of age may be married only if pregnancy is involved. A doctor's certificate stating that marriage is necessary to prevent illegitimacy of the child must be given to the issuer of the marriage licence, or the clergyman who will publish banns.

Remarriage of a Divorced Person

Where either party of an intended marriage has been previously married and the marriage has been dissolved or annulled, banns may not be published. Persons divorced in Canada and subsequently seeking to remarry may obtain a licence from the issuer of licences by submitting to him the final divorce decree or a certified copy thereof, and such other material as he may require. A marriage licence will not be issued to a person whose previous marriage was dissolved or annulled elsewhere than in Canada, unless authorization in writing is first obtained from the Provincial Secretary.

Presumption of Death

A married person who alleges that his or her spouse is missing and has not been heard of or from for the last seven years, and that reasonable inquiry gives no reason to believe that the spouse is living, may apply to a County Court judge for an order of Presumption of Death. A copy of this order must be presented to secure either a marriage licence or a publishing of banns.

Although a Presumption of Death order permits a person to remarry, it does not dissolve the first marriage nor authorize disposal of the "dead" person's property. If the first husband, who was presumed dead, is shown to be alive the wife's second marriage becomes void but any children of that marriage are not considered to be illegitimate.

Common Law Relationships

Generally, common law relationships do not have any recognized status in law, since they are not marriages in a legal sense.

There are a few exceptions to this rule of no status. A common law wife has the same rights as a legal wife under The Canada Pension Plan, where the relationship is of 7 years duration; and under The Workmen's Compensation Act where the relationship is of 6 years duration or of 2 years duration where the woman has had a child.

Where a woman lives with a man to whom she is not married, she may under certain circumstances be disqualified from receiving welfare assistance for herself and her children.

Under nearly all other legislation, a common law relationship is not recognized. The length of time the relationship has endured is irrelevant, as is the fact that children have been born. Where one of the partners dies without leaving a will, the other is entitled to nothing. If the deceased had legitimate children and left no will, his illegitimate children are entitled to nothing.

Similarly, if a common law husband deserts, his wife has no claim for support, although she may have a claim on behalf of any children of the union.

Property Rights

Until fairly recent times, not only were wives considered to be their husband's property, but when a woman married all her possessions became the property of her husband. This position is now changed, and the property rights of a married woman are generally the same as those of anyone else.

A wife has the same power to contract as a single woman. Her contracts bind all separate property which she owns at the time of making the contract or acquired later, and as a wife she continues to be liable to the extent of her separate property for all debts acquired or contracts entered into by her before marriage. The husband is bound to satisfy the debts of his wife incurred by her for necessities. However, he is not responsible for any debts acquired or contracts entered into by his wife before marriage. A married woman's wages, or any property acquired by her as a result of any employment she is engaged in, normally become her own separate property. Thus, in most cases, a husband has no right to any of his wife's earnings. For income tax purposes, however, where a husband and wife work together in the husband's business her income from the business is deemed to be that of her husband.

Generally, a married woman has the same power to sue, and the liability to be sued, as a single woman. Any money she recovers in court becomes her separate property and by the same token any money recovered from her must come out of her separate property. However, a wife may not sue her husband for any wrongs done by him to her, except where such an action involves the protection of her separate property. For example, if there was a collision between a car owned by the husband and another one owned by a wife, the wife could sue the husband for the damage caused to her car only, but not for her personal injuries.

Some problems may arise in connection with property that has been paid for in part by both husband and wife, as in a case where they have each contributed a part of their earnings toward the purchase of a car. In a situation of this type the property may be held to belong to the partner in whose name it is registered, unless a very definite intention to the contrary

or clear evidence of financial contribution by the other partner can be shown.

Property can be held either individually in the name of the husband or the wife or in both of their names as co-owners. Today, the most common forms of co-ownership are *joint tenancy* and *tenancy in common*.

The differences between these two forms can best be illustrated by examining the situation which arises on the death of one of the co-owners. If the land has been held by tenants in common, the deceased owner's share will go to his heirs as directed by his will. If, however, the land has been held by joint tenants the surviving tenant will automatically become the sole owner of the property.

However, since other factors outside the scope of this publication may determine which of these forms of ownership is most appropriate, it is suggested that you discuss these matters with your lawyer.



Change of Name

There is no law which requires a woman to adopt her husband's surname upon marriage. The change of surname is merely a custom. However, upon marriage, a woman's passport is no longer valid and she must obtain a new one which indicates not only her own surname if she chooses to continue using it, but also her husband's surname.

At birth, a person, if legitimate, takes the surname of his or her father. Except when it is done fraudulently or for some other improper purpose, nothing in the law prohibits a person from adopting or assuming any name he or she desires. However, if that person wants to legally effect a change in name it must be accomplished in the following manner.

Any person who is a British subject or a Canadian citizen and at least 18 years of age, except a married or separated woman, may apply for a change of name. It is necessary to consult a lawyer who will make the application. An application by a married man to change his surname is also made on behalf of his wife and children.

An unmarried mother who marries, or a widow who remarries, may with the consent of her husband apply for a change of surname of her children to that of her husband.

A parent whose marriage has been dissolved may make an application for a change of surname of children for whom he or she has custody providing the other parent consents.

A woman whose marriage has been dissolved and who remarries may apply for a change of surname of her children to her surname on remarriage. In this case the consent of her new husband as well as of the children's father is required.

Support

One of the basic duties that the law places on a husband is that he must support his wife. He must do so in accordance with the standard of life which they have maintained in the past.

As part of the right of support, a wife has an implied right to pledge her husband's credit for necessities which is very difficult to revoke. The extent of a husband's liability for his wife's debts is difficult to define. Much will depend on the economic circumstances of the particular family.

An advertisement by the husband in the local newspaper warning tradesmen that he will not be responsible for his wife's debts is of little value. The husband may revoke his wife's credit by sending notice to each and every tradesman, but that revocation is contingent upon his being able to prove that his wife is able to pay for the goods herself. However, no tradesman is under any obligation to extend credit to anyone.

The wife is not responsible for her husband's debts except where he entered into a contract on her behalf and with her express authority.

Dissolution of Marriage

Annulment

In some instances, even though the parties go through a form of marriage the marriage may still be ended without the necessity of divorce proceedings. First in this category are those marriages which never were marriage — where one of the parties was already married or where there has been a failure to comply with one of the basic legal conditions for marriage, or where one of the parties did not consent freely to the marriage. Because marriages of this kind are really "void", having never come into existence, it is not necessary strictly speaking to take any action to bring them to an end. However, it is usually advisable to have them officially declared void by a court, in order to clarify the situation with respect to property rights, creditors and heirs. A decree of nullity, which officially declares a "marriage" to be void, may be requested by any interested person, not only by the two people directly involved.

Second, there are the marriages which the law calls "voidable" — where even after the ceremony is performed, one of the parties may change his mind. In these circumstances, before the marriage has been consummated (i.e. before sexual intercourse), either or both of the parties may apply to have the marriage annulled for any of the following reasons:

- a) a physical inability to have intercourse with one's spouse — this does not include sterility or frigidity;
- b) insanity at the time of marriage;
- c) a mistake as to the identity of the person married;
- d) failure to comply with licensing requirements.

Normally a mistake as to the character, or the financial or other circumstances of the person married, is irrelevant and will not be grounds for an annulment.

A woman seeking official annulment of a void marriage may petition for it in the province where she lives and intends to live, no matter where her "husband" may be. On the other hand, a woman seeking an annulment of a voidable marriage is regarded as having the same domicile as her husband and she must institute proceedings in the place where her husband is domiciled.

Separation

In Ontario, marriage separations are usually a matter of private contract. The interests of both husband and wife are safeguarded by a mutual separation agreement which is drawn up and signed by both. Such an agreement settles the rights of the parties, unless either one of them experiences a marked change in his or her economic circumstances, or engages in improper conduct. For example, depending upon the provision of the agreement, adultery by one spouse may enable the other to set the separation agreement aside.

A separation agreement permits a couple to live apart but no matter how the agreement may be worded, it cannot legally allow either partner to remarry. Nor does it release the separated husband from his financial obligation to support his family.

Even when a separation agreement exists, a husband who leaves his wife and children without adequate maintenance may be summoned before one of the Family Courts established throughout the province and ordered to make whatever payments appear to be reasonable under the circumstances. However, a wife who has been granted a maintenance order against her husband may lose her right to this if she commits adultery.

Divorce

Domicile and Residence Requirements

Before a person can petition for a divorce in Canada that person must be living in Canada at the time that the petition is made and also intend to continue living here; that is, the petitioner must have a Canadian *domicile*. For the purpose of The Divorce Act, the wife's domicile is determined as if she were unmarried, so that she can petition for divorce in the place where she is domiciled, no matter where her husband may be.

In order for an Ontario court to grant a divorce, one of the spouses must live in this Province. In practice, this means that one of them must have actually resided in Ontario for at least ten months of the year preceding the petition for divorce.

Grounds for Divorce

A married person may petition for divorce if, since the marriage, his or her partner has committed adultery, been guilty of sodomy, bestiality, or rape, has engaged in a homosexual act, has gone through a form of marriage with another person, or has treated the petitioner with physical or mental cruelty which would make further living together intolerable.

Also, a divorce may be granted to a couple on the ground of marriage breakdown if the court is satisfied that there has been a permanent breakdown of their marriage under any of the following circumstances.

Imprisonment. The other partner has been imprisoned for the equivalent of three years out of the five years immediately preceding the petition; or the other partner has been imprisoned for at least two years immediately preceding the petition, when this imprisonment was part of a sentence to death or to a term of at least ten years, and when all rights of appeal against the conviction or sentence have been exhausted.

Alcohol or Drug Addiction. The other partner has been grossly addicted to alcohol or drugs for at least three years immediately preceding the petition, and there is no expectation of rehabilitation within a reasonable length of time.

Disappearance. The petitioner has had no knowledge or information concerning the whereabouts of the other partner for at least three years immediately preceding the petition, and throughout that period has been unable to locate that person.

Non-consummation of Marriage. The marriage has not been consummated for at least one year, either because the other partner has been ill or disabled and, therefore, unable to consummate it or because that partner has refused to consummate it.

Separation or Desertion. In the event that the separation is due to desertion by the petitioner and the couple have lived apart for the five years preceding the petition; or if the separation is due to any other causes and the couple have lived apart for the three years immediately preceding the petition.

Exceptions

Even if one or more of these reasons for divorce exists, the court may still refuse to grant a divorce if it is satisfied that any of the following "bars to divorce" exist.

a) ***Condonation.*** Condonation of a matrimonial offence means the forgiveness of the offence with a full knowledge of the circumstances, followed by a reinstatement of the offending party to his or her former position in the marriage, subject, however, to the implied condition that no later offence be committed. That is, the two essential ingredients are forgiveness and reconciliation. The reconciliation of the parties is usually equated with the resumption of marital cohabitation. If, for example, a wife commits adultery, thus giving her husband ground for divorce, and he continues to live with her as her husband for more than a 90-day period, then he will be taken to have condoned the offence and he may not use it as evidence in order to obtain a divorce.

b) ***Connivance.*** The petitioner is guilty of connivance if he or she consented willingly to the behaviour which is being put forward as ground for divorce. In practice, connivance can consist of anything from express permission to engage in the act to approval of a situation which the average person would know will lead to it.

c) ***Collusion.*** Collusion is involved in any arrangement to deceive the court; for example, by suppressing information or by purposely providing false or inaccurate evidence. A divorce may be refused if there has been condonation or connivance unless, in the opinion of the court, the public interest would be better served by granting the divorce. If the court finds that there has been collusion, the divorce cannot be granted.

Other Reasons

a) *Irresponsible Desertion.* If a divorce is being sought on the ground of marriage breakdown caused by desertion or separation, it will not be granted if,

- in the opinion of the court, it would be unduly harsh or unjust to one of the partners;
- it would hinder the making of reasonable arrangements for the support of children or the support of a partner who will be in need of it.

Essentially, this means that divorce will not be granted to a deserter if the desertion amounts to an irresponsible abandonment of the obligation for family support.

b) *Insufficient Grounds.* In any particular case, the question of whether the existing situation warrants the granting of divorce is ultimately decided by the court, not by the couple involved. The court makes its decision on the basis of the guidelines established by The Divorce Act and by previous court decisions. For example, it must decide about such matters as whether the addiction complained of is "gross" and irremediable, whether the cruelty complained of is of sufficient weight to make living together "intolerable", or whether the evidence of a particular marital offence is sufficient to indicate that it really did occur.

c) *Possibility of Reconciliation.* In no case will the court grant a divorce if a reconciliation seems possible. If reconciliation fails, the action for divorce may be begun again.

Provision to Encourage Reconciliation

Under The Divorce Act, legal advisers must now draw their client's attention to marriage counselling services and discuss with them the possibility of reconciliation. The court must also question them about the possibility of reconciliation unless the circumstances of the case make it very inappropriate. If at any point in the proceedings a reconciliation appears possible, the court may adjourn and, with the consent of the parties, or at its discretion, appoint someone (e.g. a marriage counsellor) who may be able to assist the parties in preserving their marriage. After an adjournment of 14 days, either party may apply to the court in order to resume the proceedings.

Judgement

The initial court order granting a divorce is called a *Decree Nisi*. Usually there is a three-month period between the decree nisi and the final *Decree Absolute*. Until the decree absolute the parties are still married.

During this interval a person may appeal the decision, or bring forward new evidence which is important (e.g. reconciliation or collusion) but which was unavailable at the time of trial. In addition, the court may use this period to decide such questions as custody of children or alimony.



Only when the divorce decree has been made *absolute* are the parties free to remarry.

Maintenance

In strict terminology, the word "alimony" is confined to payment ordered to be made by the husband to the wife, while "maintenance" is the allowance which is ordered by the court to be paid after the final divorce decree. However, in practice the terms appear to be used interchangeably. The factors which the court considers in setting a figure are the means of both husband and wife, and the conditions and conduct of each of the parties. Generally speaking, payment is made by the person who has the means to the person who is in need. The payments may be required weekly, monthly, annually or in one lump sum.

Maintenance orders may be changed or removed if the conduct or circumstances of either of the two persons changes.

Note: As a result of reciprocal arrangement with other provinces and with certain countries, maintenance orders can be enforced against persons who no longer reside in Ontario.

Inheritance

The distribution of an estate depends upon whether or not the deceased person died with a will ("testate"), or without a will ("intestate"). If a man dies leaving a will, his estate will normally be distributed in accordance with his wishes.

If he dies without a will, the law makes provision for the distribution of his estate and, under The Devolution of Estates Act, the widow is entitled to a preferential share.

The widow is entitled to all of her husband's estate if it has a total value of less than \$20,000 or the first \$20,000 if its value is greater. Any remainder is distributed between the children and the wife so that the wife takes at least one third. If there is no wife, the children share the estate equally.

If the wife dies before the husband without leaving a will, he is entitled to the first \$20,000 of her estate.

When a person dies intestate, someone must apply to the Surrogate Court to be appointed administrator of the estate. It is the duty of the administrator to distribute the estate and pay all debts, funeral and legal expenses. Usually the wife, if she so desires, is entitled to apply first to be appointed administrator.

Dependant's Relief

Where a husband dies leaving a will which does not make adequate provisions for the future maintenance of his family, his wife can apply for relief to a judge of the Surrogate Court in the county in which the deceased's estate

is being administered. Pursuant to The Dependant's Relief Act, the judge may order that a payment in a lump sum or in instalments be made out of the estate, or that property out of the estate be distributed so as to provide support for the deceased's family.

Death Duties

Depending on the size of the estate, the number of dependants and the beneficiaries named, a deceased person's estate may be taxed by both the provincial and the federal governments.

Provincial Succession Duties

The rate of succession duty payable depends upon three factors:

- a) the relationship of the beneficiary to the deceased;
- b) the total value of the estate;
- c) the portion of the estate passing to the beneficiary.

For example, where a widow is the sole surviving dependant, she is entitled to a \$250,000 exemption. However, where there are also surviving dependant children, the total dependant's allowance is \$250,000 plus \$15,000 for each dependant child.

Federal Gift and Estate Taxes

The proposed Tax Reform Bill means that the present federal gift and estate taxes will probably be abolished on or after December 31, 1971. For further information, contact your local Income Tax Information Office of the National Revenue Department.

Dower

Generally, in Ontario, when a man dies, his wife is entitled during her life to a one-third interest in her deceased husband's real estate. This right is called "dower".

Dower attaches to any land held by the husband during marriage, and in order for him to sell or transfer it, his wife must agree to give up her dower interest in it by signing the deed. If this is not done, she retains the dower interest in the land even though her husband has sold or transferred his part of it to someone else.

A wife's dower rights cannot be taken away from her by her husband's will, although it could happen that the will might offer more favourable terms if she renounces them. If the husband dies intestate, she will have to choose between dower and her preferential share under The Devolution of Estates Act mentioned above.

If a wife is shown to be of unsound mind or is separated from her husband, a judge may grant an order making it possible for her husband to sell or transfer land without her signature. If a wife is guilty of adultery she may lose her dower rights.

Curtesy

The corresponding interest of a husband in his wife's real estate is called "curtesy". A husband is entitled for life to a one-third interest in all land owned by his wife at the time of death. However, this interest is not as strictly applied as dower and a wife can sell or transfer land without having her husband give up his curtesy interest.

Children

Every parent in Ontario is required by The Children's Maintenance Act to maintain and educate his or her children until they reach the age of 16. If the husband is not able to fulfil this obligation, the wife is obliged to support her children. Parents who fail in this duty are liable to be imprisoned for up to three months. A child is legally permitted to leave home at the age of 16 if he or she is self-supporting.

Persons leaving children under the age of ten unattended for an unreasonable period of time are guilty of an offence and subject to a fine or imprisonment upon conviction.

Children's Aid Societies

The Child Welfare Act provides for the protection of children in Ontario. The Act is administered through 51 Children's Aid Societies, which cover all counties and districts, as well as separate sectarian societies in Toronto, Hamilton and Windsor.

Some of the functions of the Children's Aid Societies are: the investigation of allegations that children may be in need of protection; the protection of children where necessary; the provision of care for children assigned to the society; the placement of children for adoption; the provision of assistance to unmarried parents; and the provision of counselling and other services to families for the protection of children or the prevention of circumstances requiring the protection of children.

The Children's Aid Society, a constable or other police officer may take any child apparently in need of protection to a place of safety and keep the child until he can be brought before a judge of the Provincial Court (Family Division), or may apply to a judge for an order requiring the person in whose charge the child is to produce the child before a judge.

If the judge finds that the child is one whose physical, mental and moral health is being neglected, he may order either that the child be returned to his parents, guardian, or any other persons subject to the supervision of the Children's Aid Society, or that the child be committed temporarily or permanently to the care of the Society, subject in either case to any visiting privileges which he finds appropriate.

Children temporarily committed to the care of the Children's Aid Society are known as Society wards, and it is hoped that they will return to their homes as soon as the

Society has had the opportunity to counsel and strengthen the family. If after two years it becomes apparent that the family cannot be rehabilitated, a judge may order that the children become Crown wards, in which case the Society assumes the responsibility of a legal guardian for them until the age of 18. The wardship can be extended by the court to age 21 if there appears to be a valid reason for doing so, such as continuing education.

Adoption

Residents of Ontario may apply to the Children's Aid Society to adopt children. Approval of the Children's Aid Society is required in all adoptions, including those of children placed privately and those in which relatives adopt a child. An application for adoption may be granted if investigation by the Society shows that the applicant is suitable and the adoption appears to be in the best interests of the child.

The adopted child assumes the surname of the adopting parents, and his given name may also be changed at the time of adoption. The adopted child becomes the child of the adopting parent, for all purposes as if he had been born to them.

Children Born Outside Marriage

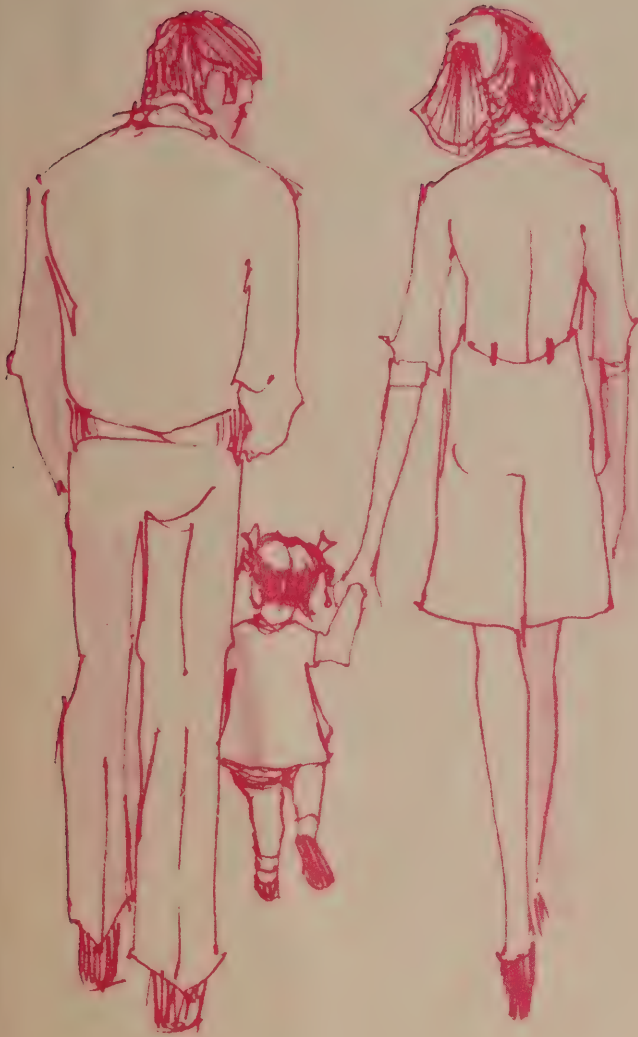
Children's Aid Societies may act to protect children born outside marriage and provide counselling services for the parents of such children. The Society will not usually interfere where the child is being voluntarily cared for by a person whom the Society considers is suitable.

The Society may assist the mother and the alleged or putative father in making an agreement for the support of the child. If such an agreement is not adhered to and if sufficient evidence is produced, a judge may make an affiliation order declaring the alleged father to be in fact the father of the child, and requiring him to pay for the maintenance of the child until the child is 16 years old.

A child born out of wedlock to parents who subsequently marry is considered by The Legitimacy Act to have been legitimate from the time of the birth, but the birth must be registered with the Provincial Registrar. If the mother marries a man other than the child's father, her husband may, with her, jointly, adopt the child.

Divorce, Separation and Desertion

If a husband deserts his family, a judge of the Provincial Court (Family Division) may order him to pay regular sums to his wife for the maintenance of herself and their children. Allowances are paid by the local municipal welfare officer to needy mothers if the father is unwilling or unable to support his children. Also, allowances are payable directly by the Province to a wife who is in need and who is deserted, divorced, or widowed. In addition, every mother in Canada is entitled to receive a monthly allowance for children under 16 years of



age from the Department of National Health and Welfare, and a Youth Allowance to 18 if the child is in school.

In a divorce action where there are children under 16 years of age, the Children's Aid Society investigates the plan for caring for the children and reports the proposed plan to the Official Guardian prior to the court hearing.

After separation or divorce there may be a dispute between the parents as to the custody and maintenance of the children. If there is, the court may make provision for this and may also order the father or mother to make payments for their children's support or order any property settlement that it deems to be in the best interest of the children.

In practice there is a strong presumption that when a marriage breaks up the mother should have the custody of any young children. Before this presumption can be upset, the father must prove that the mother is a person unfit to look after the children. In any event, the court may still make an order respecting access to the children and allow the parent who does not have custody to see them at regular intervals.

Parents' Maintenance

Under certain circumstances, children may be obliged to contribute to their parents' support. Parents who feel entitled to support may appear before a judge of the Provincial Court (Family Division) to show that they are entitled to be supported by one or more of their children, either because they are destitute or because they are unable to maintain themselves due to age, illness or infirmity. The judge may then order one or more of the children to appear in court. If the judge is given sufficient evidence that the parent is entitled to maintenance and that the children are capable of paying it, he may order the children to pay their parents an amount not exceeding \$20 a week. The children can apply to have the amount reduced if there is any change in the parents' circumstances or their own.

The fact that a daughter is married does not relieve her of this responsibility. The financial position of her husband will be considered in determining her share of the responsibility.

Therapeutic Abortion

The Criminal Code of Canada prohibits the procurement of a miscarriage except under the following circumstances.

A woman may legally obtain an abortion if the majority of the members of a therapeutic abortion committee certify that, in their opinion, the continuation of the pregnancy of that woman would, or would be likely to, endanger her life or health. Generally, the definition of "health" depends upon the particular committee, although psychiatric evidence, such as the possibility of mental illness or a suicide attempt, is usually considered.

Therapeutic abortion committees are appointed by the Boards of Governor, Trustees or Directors of accredited hospitals who intend to perform abortions. About two-thirds of the accredited hospitals in Ontario have appointed such committees. The provincial Minister of Health may also approve non-accredited hospitals for the appointment of therapeutic abortion committees provided that they have the necessary staff and facilities. Each therapeutic abortion committee must consist of at least three qualified medical practitioners. If an application for termination of pregnancy is granted, the approved abortion may only be performed by a qualified medical practitioner who is *not* a member of *any* therapeutic abortion committee.

Consumer Protection

The Consumer Protection Act is designed to protect the buyer's rights in the market place.

Buying on Credit

Generally, if you buy a product or service worth more than \$50 and the goods are not delivered, or the services are not performed, or full payment is not made at the time when the contract is entered into, you, as the buyer, are entitled by law to a clear, written statement that shows:

- The name and address of the seller and buyer.
- A full description and itemized price of the goods or services plus a detailed statement of the terms of payment.
- The actual cash price of the goods or services purchased.
- The amount of any insurance charges or official fees to be paid under Federal or Provincial law.
- The amount of any down payment or trade-in.
- The amount of all finance charges on the net of the balance to be paid, shown in dollars and cents and as an annual percentage rate.
- The basis by which additional charges can be made if you fall behind in payments.
- A statement of any warranty or guarantee. If there is no guarantee, the contract must say so.

You and the seller must have original signed copies of any contract. (no carbon signatures). Failure to obtain such a writ-

ten statement or contract makes the transaction legally unenforceable against the purchaser. If you make a deposit or give a trade-in without a signed contract and do not receive the goods or services, the seller, at your request, must return your deposit or trade-in.

If the full price of the goods or services is less than \$50, you would be well advised to ask for a contract, listing these points.

Repossession

If two-thirds or more of the purchase price including carrying charges has been paid, the goods cannot be repossessed or resold without permission of a County or District Court Judge.

Door-to-Door (Itinerant) Sales

Sales by door-to-door (itinerant) salesmen are subject to a unique "cooling-off" period of two clear working days. This period comes into effect when you, the buyer, receive a copy of the sales contract. That is to say, you can cancel the contract within that time.

The working days include Saturday, but not Sunday or statutory holidays. The cancellation must be done in writing, and delivered personally, or by registered mail post-marked within the two-day period.

If you are having problems in the above areas, contact: The Registrar, Consumer Protection Bureau, Ontario Department of Financial and Commercial Affairs, 555 Yonge Street, Toronto. Send all the facts and enclose any contracts, receipts or guarantees as well as any advertising material that influenced your decision.

The Working Woman

Income Taxes

A woman who is thinking about taking a job should consider the effect which this will have on family income taxes. A husband may normally claim a \$1,350 exemption for his wife who does not work, or who works and earns an income not exceeding \$250 per year. If a wife is employed and earns over \$250 per year, the exemption which her husband may claim for her is reduced by the difference between \$1,350 and her earnings for the year. For example, if she earns \$950 her husband may claim a deduction of \$400.

A wife who earns \$1,600 or more in a year must file a separate income tax return. It is to the family's advantage for the partner who earns the highest income to claim the children as dependants. If a wife has earned less than \$1,600 in a year, and if her employer has made any income tax deductions from her pay, she should still file a return in order to get a tax refund.

In addition to the above deductions, all employees can claim a new employment expenses deduction of up to 3 per cent of income from employment, with a maximum of \$150 a year. No receipts for this will be required.

In the case of a family where the husband is unable to work and the wife is the primary wage earner, she may claim her husband as an exemption in the same way as a man normally claims his wife.

An unmarried person, including a widow or widower, can claim the married exemption of \$2,850 for supporting a brother, child, or other relative if that person lives in the taxpayer's home. But a taxpayer claiming the married exemption in these circumstances may not claim the \$300 or \$550 deduction for that dependant as well.

If, in order for a wife to take a job, it is necessary to employ a housekeeper or babysitter, or to have a child cared for in a nursery school or day-care center, it should be kept in mind that these expenses are deductible from income taxes as of January 1, 1972 to the amount of up to \$500 at the rate of up to \$15 a week for each child under 14 years of age to a maximum deduction of \$2,000. Deductions are also permitted for care of children 14 years of age or over who are dependent because of mental or physical illness. Receipts bearing the social insurance number of the individual who performed child care services must be retained.

A sole-support mother, who must hire a housekeeper in order to take a job, should consult the Canada Department of National Revenue concerning her deductions.

A housewife who employs a cleaning woman, or other domestic help, must deduct income taxes and Canada Pension Plan contributions if she pays the employee \$600 or more a year. Detailed information may be obtained from the local office of the Department of National Revenue.

Child Care Facilities

In July, 1970, there were 216 full-day programmes for children operated by licensed public and private nursery schools in the province. In addition, parents can use 425 licensed half-day nurseries making supplementary arrangements for their children's care for the rest of the day. Total accommodation in these day and half-day programmes in 1970 was for approximately 30,000 children.

Municipally operated nurseries receive a subsidy of 50 per cent of their capital costs and 80 per cent of their net operating and renovation costs from the provincial and federal governments, and parents pay according to their financial ability. Several private nurseries have entered into agreement with their municipalities, under which parents unable to pay the full fee of the nursery may be assisted to meet the cost. In this case, the net expense to the municipality is also reimbursed at 80 per cent. There are now 199 nurseries in receipt of public funds.

Recent amendments to The Day Nurseries Act provide for an 80 per cent subsidy of operating costs for municipally organized or authorized "Private home day-care". (This is when day-care for not more than five children is provided under qualified supervision in private homes.)

Information as to the regulations governing the establishment and operation of nurseries may be obtained by writing to the Day Nurseries Branch, Department of Social and Family Services.

Labour Legislation

Under The Canadian Constitution (British North America Act) the provinces have principle authority in matters of labour legislation. This means that most working women in Ontario are covered by the Ontario labour laws outlined in the following pages.

However, the Federal government has authority to legislate in labour matters in certain industries and undertakings. The minimum standards and working conditions for employees in these types of operations are governed by The Canada Labour (Standards) Code. Examples of undertakings to which federal labour legislation applies are — communications, banks, interprovincial transportation, and federal Crown corporations such as Air Canada.

If you are employed in a business which is under federal jurisdiction, you should contact a regional office of the Canada Department of Labour for further information.

Equal Job Opportunity

The Women's Equal Employment Opportunity Act, 1970, prohibits discrimination because of sex or marital status in recruitment and hiring, training and apprenticeship, promotion and transfer, and dismissal. Classifying a job as "male" or "female" or maintaining separate seniority lists based on sex or marital status is in violation of the Act.

Some jobs, however, cannot reasonably be performed because of sex or marital status and employers, unions or individual employees can apply to the Women's Bureau for information on exemptions.

Advertisers may not place, and newspapers may not print, advertisements limiting a position to a person of one sex or marital status. Similarly, employers may not place, and employment agencies may not receive, restrictive job orders.

All employers of six or more employees are bound by the Act. This law also applies to men workers.

Persons who have reason to believe that they have been discriminated against in employment because of their sex or marital status should contact the Women's Bureau. Complaints may also be filed on behalf of another person with

their consent. Reprisals against any person who has made, or may make, an inquiry or complaint are prohibited.

Equal Pay

The equal pay provision has been strengthened and transferred to The Employment Standards Act, which states that:

No employer or person acting on behalf of an employer shall discriminate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee, or vice versa, employed by him for the same work performed in the same establishment, the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions, except where such payment is made pursuant to

- a) a seniority system;
- b) a merit system;
- c) a system that measures earnings by quantity or quality of production; or
- d) a differential based on any factor other than sex.

A woman who has reason to believe that she is receiving less pay than a man in her company for doing the same work should bring it to the attention of the Employment Standards Branch of the Department of Labour. Her name will not be revealed to her employer.

In addition, field officers of the Employment Standards Branch make routine inspections. Wages withheld in violation of this provision are recovered in the form of unpaid wages, under the supervision of the Department of Labour. This law covers all women employees, regardless of occupation.

Wages and Working Conditions

Although wages and working conditions will vary with individual employers, contracts of employment and collective agreements, there are certain basic minimum standards that are established by law.

Homeworkers are covered by the legislation pertaining to minimum wage, vacations with pay and equal pay for equal work, but domestic workers in single private family residences are exempted.

Minimum Wages

The minimum wage in Ontario is \$1.65 per hour. It applies to both men and women, and to full-time and part-time employees.

There are certain exceptions to the minimum wage in some industries and occupations. Students, learners, construction workers, ambulance and taxi drivers, and certain occupations within the hotel and restaurant industry are affected by these exemptions. Details can be obtained from the Employment Standards Branch of the Department of Labour.

Where employees are employed on the basis of receiving meals and/or room as part of their wages, the maximum

amount of which meals or room may be charged against the minimum wage is: \$6.50 per week for room; 65¢ each for meals up to a limit of \$13.50 per week; \$20.00 per week for both room and meals.

It is unlawful for an employer to hire a person as a learner or trainee at no pay during the training period. The law requires that learners must be paid.

An employee who is required by his or her employer to report to work shall be paid for at least three hours at the minimum wage.

Employees who believe that they are being paid less than the minimum rate provided for by law are advised to inform the Employment Standards Branch of the Department of Labour.

Similarly, a person who is not paid for work done should notify the Employment Standards Branch, which has the authority to collect unpaid wages, including overtime pay and vacation pay, up to a maximum of \$2,000 for each employee.

Statement of Earnings and Deductions

At the time wages are paid the employer must provide his employees with a written statement showing the period of time for which the wages are paid, the rate of wages and total amount, a list of deductions and the net amount being paid.

Hours of Work

A maximum work week of 48 hours applies to both men and women in Ontario. Supervisory personnel and certain classifications of professional workers are exempted.

Under certain conditions, a permit to work overtime may be obtained by the employer from the Department. The permit allows up to 100 hours of overtime per employee per year.

The overtime work of a female employee under 18 shall not exceed six hours per week.

Overtime Pay

Employees who work more than 48 hours in any week, or who work on a statutory holiday, shall receive a minimum of 1½ times their regular wage rate.

Special overtime regulations cover seasonal employees in the hotel/restaurant and canning industries among others. For information, call the Employment Standards Branch.

Night Work

If a woman works on a shift that begins or ends between midnight and 6:00 a.m., she must be provided with private transportation from or to her home by her employer.

Nurses, dieticians and most paramedical workers are now covered by this provision.

No female employee under 18 shall work in an establishment between midnight and 6:00 a.m.

Vacations with Pay

Employees who have completed 12 months of employment with an employer are entitled to an annual vacation of at least one week with pay. The amount of vacation pay must be equal to at least 2 per cent of the pay of the employee for all work done during the year.

For each year of employment after the first, the employee is entitled to an annual vacation of at least two weeks with pay. Vacation pay must be equal to at least 4 per cent of the pay earned by the employee during the year.

The employer has the right to determine the period when an employee may take his vacation and, in the case of a two-week vacation, it may be taken in two consecutive weeks or in two periods of one week each.

When an employee ceases to be employed before completing a full working year, he or she is entitled to vacation pay of 2 per cent of all her earnings during the period of employment.

In the absence of any other agreement, employees who do not work on a statutory holiday are not legally required to be paid for that day.

Meal Periods

After every five hours of work, an employee shall be given a meal period of at least one half hour or such shorter period as is approved by the Department.

Coffee breaks during a shift are not required by law, but are usually considered to be good company policy and personnel practice.

Termination of Employment

The Employment Standards Act has been amended to require written notice of termination of employment for those who have been employed for at least three months.

The minimum amount of notice required is related to the length of employment as follows:

<i>Period of Employment</i>	<i>Notice Required</i>
Less than 2 years	1 week
2 - 5 years	2 weeks
5 - 10 years	4 weeks
10 years or more	8 weeks

After giving written notice the employer must *either* a) continue the employment of the employee until the required period of notice has expired, *or* b) the employer may terminate the employee immediately, provided that he pays the employee what he would normally have earned, without overtime, if he had worked out the required period of notice.

The amendment also requires longer periods of notice in the event of collective dismissals involving fifty or more employees.

This amendment was proclaimed in effect on January 1, 1971 and further inquiries should be directed to the Employ-

ment Standards Branch of the Department of Labour.

Separating employees are entitled to receive vacation pay.

Sick Leave

There is no provision in Ontario's labour law for sick leave. It is a matter of individual company policy, or employer and employee negotiations whether or not employees are entitled to time off for illness. Pending changes to the Unemployment Insurance Act will provide for up to 15 weeks of benefits for those who have to stop working because of illness (see "Unemployment Insurance" section, pg. 18).

Maternity Leave

The Women's Equal Employment Opportunity Act, 1970 prohibits dismissal for pregnancy and provides for 12 weeks' unpaid maternity leave for employees who have worked for an employer for at least one year before the commencement of the maternity leave.

All employers of 25 or more employees of both sexes are bound by the maternity leave provisions.

Pre-natal Leave

On presentation of a medical certificate, an employee may initiate the leave at any time within six weeks of the expected date of birth. Or the employer can initiate the leave even earlier if he can show that the employee cannot perform her normal duties adequately.

Post-natal Leave

This is six weeks unless the employee produces medical authorization for an earlier return to work. Of course, longer periods of post-natal leave may be negotiated with the employer.

The intent of the legislation is that the employee should return to the *same* position or a *comparable* one in terms of work setting, level of responsibility, and remuneration. If a post-natal leave of longer than six weeks has been arranged then the position on the return is also open to negotiation.

The Act does not provide for income maintenance or accumulation of seniority and benefits during maternity leave, but an employee must not lose seniority or benefits which have accumulated up to the point of leave-taking. The provision relating to seniority and benefits provides for a minimum standard only and in no way affects more beneficial arrangements.

Inquiries about maternity leave should be directed to the Women's Bureau of the Department of Labour.

At the moment pregnant women are disqualified from unemployment benefits for six weeks before and six weeks after their confinement. When the new Unemployment Insurance Act becomes effective, pregnant women will be eligible for up to 15 weeks of benefits during their maternity leave. (see "Unemployment Insurance" section, page 18).

Industrial Safety

The Industrial Safety Branch of the Department of Labour conducts a programme of inspection and consultation to eliminate unsafe working conditions.

Any person who feels that there are unsafe working conditions existing in an industrial establishment should contact the Industrial Safety Branch.

Lifting Weights

There is no law which categorically limits the weight which women may lift. The Industrial Safety Act, however, provides that no person (male or female) shall be required to lift, carry, or move anything so heavy or in such a manner as to be likely to endanger his or her safety or the safety of any other person in the industrial establishment.

Rest Areas

Where an employer employs thirty-five or more persons, or where he is so directed by an inspector, he must provide a place for employees to eat as well as any equipment that may be required by the inspector.

When ten or more women are working, the employer must provide a rest room or other place affording reasonable privacy, with one or more couches or cots and chairs.

The exact number of toilets and washbasins required depends on the number of employees.

If thirty-five or more women are employed, a female supervisor or matron must be appointed to have charge of the welfare of female employees. This person must hold a St. John Ambulance Senior First Aid Certificate and work in the immediate vicinity of the First Aid Box. Her other duties should not prevent her from attending adequately to the employees' welfare.

Detailed information about the above, and other safety regulations, can be obtained from the Industrial Safety Branch of the Department of Labour.

Injury

Under The Workmen's Compensation Act most employers must insure their employees through the Workmen's Compensation Board against injuries that occur on the job or as a result of employment.

According to the circumstances, medical expenses, compensation for income lost during temporary total disability and pensions for permanent disability may be paid by the Board to injured workers. Special medical and rehabilitation services may be provided to enable the individual to return to useful work as soon as possible.

The employer is initially responsible for promptly reporting all industrial injuries to the Workmen's Compensation Board.

For more information, contact the Workmen's Compensation Board, 90 Harbour Street, Toronto 1.

Human Rights Legislation

Discrimination Against Minority Groups

Under The Ontario Human Rights Code, discrimination against any person with regard to employment, terms or conditions of employment, or membership in trade unions because of race, creed, colour, nationality, ancestry or place of origin is prohibited. Employers or employment agencies may not use signs, advertisements or application forms or make any inquiries which might be discriminatory against any of these groups.

Exclusively religious, philanthropic, educational, fraternal or social organizations not operated for private profit are no longer automatically exempted from sections of The Ontario Human Rights Code prohibiting discrimination in employment. Exemptions, in future, will be allowed only when a factor such as religion constitutes a reasonable occupational qualification.

Discrimination against any person through such devices as dismissal, threats of dismissal, coercion, or the imposition of penalties are prohibited where that person has made or may make a complaint or disclosure under the Act, or has or intends to testify or participate on behalf of the matter complained of under the Act.

Discrimination on the Basis of Age

The Age Discrimination Act, 1966, prohibits employers from discriminating against persons between 40 and 65 years of age with regard to hiring, terms or conditions of employment, or promotion. Trade unions are also prohibited from excluding such persons from membership. Employers or employment agencies may not use signs or advertisements which might be discriminatory against this group.

To file a complaint or request further information regarding human rights legislation, contact the Ontario Human Rights Commission of the Department of Labour.

Unemployment Insurance

Unemployment Insurance is a federal, rather than a provincial, matter. At the time of going to press, extensive revisions to the present Unemployment Insurance Act had been proposed, but not enacted, although the changes are expected to come into effect on or after July 1, 1971.

Basically, these changes will provide for nearly universal coverage of all employees, easier qualification for increased benefits and benefits during sickness and pregnancy leave. For more details you should inquire at your local office of the Unemployment Insurance Commission.

Acknowledgement

The Women's Bureau wishes to acknowledge appreciation to E. Marshall Pollock, Counsel of the Ontario Department of Justice, for his advice on legal matters.



